

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013030602
v.	
REDLANDS UNIFIED SCHOOL DISTRICT,	
REDLANDS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013020305
v.	
PARENT ON BEHALF OF STUDENT.	ORDER DENYING REQUEST FOR CONTINUANCE

On April 15, 2013, Student's Mother filed a motion to continue the matter on the ground that her non-attorney advocate had a medical problem requiring surgery and would not be available for hearing. Parent contended that she was afraid to call District's attorney. On April 17, 2013, District opposed the request on the ground that the matter could not be further delayed given the status of Student's program. District's counsel indicated a willingness to discuss mutually agreed dates with Student's Mother.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have

stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All hearing dates and timelines shall proceed as calendared. Here, Student's Mother has requested a continuance of the hearing dates, and OAH is inclined to grant the continuance under the right facts. However, while sympathetic, OAH would require further information from the advocate himself before granting a continuance, in particular, proof of the hospitalization (through declaration under penalty of perjury if necessary), the expected recovery time, and a commitment from the advocate to future available dates. OAH cannot continue the matter further without some evidence of exactly when the hearing can be expected to be completed. Further, the parties did not discuss mutually agreed new hearing dates as is requested by OAH. District's counsel is more than willing to speak to student's Mother about the possibility of finding mutually agreeable dates, and Mother's hesitation does not excuse her failure to do so. Forms are available on the OAH website that explain the procedure. Trial setting conferences are set only in unusual cases, and this is not an unusual case. Finally, the parties are advised that consistent with the IDEA, OAH is unlikely to grant continuances in excess of 90 days, and does not grant continuances over the summer on the mere possibility that District employees may not be available. Any further continuance request shall be filed before the prehearing conference that is currently scheduled for May 6, 2013.

IT IS SO ORDERED.

Dated: April 17, 2013

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings